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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,737	12/03/2003	Igor K. Kotliar	IKK-19	5831

7590 07/27/2004

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NEW YORK, NY 10159-2021

EXAMINER

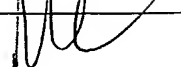
BUI, THACH H

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/726,737	Applicant(s) KOTLIAR, IGOR K. 	
	Examiner Thach H Bui	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Drawings*

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81. No new matter may be introduced in the required drawing.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-11, and 15 are rejected under 35 U.S.C. 101 because claims 1-11 and 15 combines description of the apparatus with description of method for using the apparatus and violates second paragraph of 35 USC 112 (see MPEP 2173.05(p)). The purpose of that paragraph is to require patentee to provide others with notice of boundaries of protection provided by patent, since manufacturer or seller, at time of making or selling the apparatus set forth in claim, would have no indication whether it might later be sued for contributory infringement if apparatus is used in accordance with claimed method, and since claim is thus not sufficiently precise that possibility of infringement may be determined with reasonable degree of certainty.

The claim is directed to neither a "process" nor a "machine", but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the classes of invention in the alternative only (see MPEP 2173.05(p)).

The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3752

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 5, "a special device" is not clearly described in the Specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with informalities too numerous to mention specifically. The following noted informalities are merely exemplary thereof. The claims should be revised to conform to U.S. patent Office practice.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 1 is vague and indefinite because "using its pressure and flow, as a driving force" recited in lines 4-5, renders the claim unclear. How?

Claim 1 is vague and indefinite because "said oxygen-enriched gas mixture being normally vented outside the aircraft...supplied to passengers and the crew via respiratory masks" recited in line 7, renders the claim unclear.

Claim 1 is vague and indefinite because "the oxygen content in said environment is maintained below 12% and, preferably, at 10%" and "the range from 12% to 16% and from 8% to 12%" render the claim unclear (a range within a range). See other claims for the same informalities.

Claim 1 is vague and indefinite because "depending in design or situation" recited in line 16, renders the claim unclear.

Regarding claim1, the phrase "as long as" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "as long as"), thereby rendering the scope of the claim(s) unascertainable.

Claim 2 is vague and indefinite because there is no clear or proper antecedent basis for "the leakage rate".

Claim 3 is vague and indefinite because "said mixing device is eliminated" renders the claim unclear. According to claim 2, mixing device is needed in supplying hypoxic gas mixture to the compartment(s) at a rate that is equal to or greater than the leakage rate, of which is opposite from what claimed in claim 3 i.e. the mixing device is eliminated.

Claim 6 is vague and indefinite because there is no clear or proper antecedent basis for " multiple oxygen-separation membranes connected parallel in one unit".

Whereas the claims are so informal as indicated above, the Examiner could not reasonably apply prior art thereto. Unless, indicated otherwise, the Examiner's failure to apply prior art to the claims should not be construed as an indication of allowable subject matter.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thach H Bui whose telephone number is 703-305-0063. The examiner can normally be reached on Monday-Friday, 7:30-4 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T.B.  
07/19/2004

  
MICHAEL MAR  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700